

## **TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations**

**(Continuation of California Notice Register 2010, No.8-Z,  
and Meetings of February 4 and March 3, 2010.)**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 220, 240, 316.5 and 2084 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 316.5 and 2084 of said Code, proposes to amend Section 27.80, Title 14, California Code of Regulations, relating to ocean salmon sport fishing.

**NOTE: The Fish and Game Commission is exercising its powers under Section 202 of the Fish and Game Code as the following changes to the proposed regulations may not be available to the public for the full public comment period prior to adoption. See the text of this notice—changes are shown in bold type.)**

### **Updated** Informative Digest (Policy Statement Overview)

The Pacific Fishery Management Council (PFMC) annually reviews the status of west coast salmon populations. As part of that process, it recommends ocean salmon fisheries regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Salmon Fishery Management Plan (FMP). These recommendations coordinate west coast management of sport and commercial ocean salmon fisheries in the Federal fishery management zone (3 to 200 miles offshore) off Washington, Oregon and California. These recommendations are subsequently implemented as ocean fishing regulations by the National Marine Fisheries Service.

California's sport fishing regulations will need to conform to the new Federal regulations to achieve optimum yield in California under the FMP. The Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport fishery in State waters (zero to three miles offshore) which are consistent with Federal fishery management goals and are effective at the same time.

#### PFMC Regulatory Outlook

On March 11, 2010, the PFMC will develop the ocean salmon fisheries regulatory options for public review and the final PFMC regulation recommendations will be made on April 14, 2010. The various ocean salmon sport fishery alternatives that the PFMC will examine in the process of adopting options may include:

1. the minimum size of salmon that may be retained;
2. the number of rods anglers may use (e.g., one, two, or unlimited);
3. the type of bait and/or terminal gear that may be used (e.g., amount of weight, hook type, and type of bait or no bait);
4. the number of salmon that may be retained per angler-day or period of days;

5. the definition of catch limits to allow for combined boat limits versus individual angler limits;
6. the allowable fishing dates and areas; and
7. the overall number of salmon that may be harvested, by species and area.

#### Commission Regulatory Outlook

Although there are no PFMC regulatory options to review at this time, the PFMC March options will serve as the basis for the Commission's 2010 regulatory action affecting the State's ocean salmon sport fishery. There exists a possibility of continued ocean water closures off California due to low Sacramento River fall Chinook salmon returns to the Central Valley river system in 2009.

Further Commission actions affecting the ocean salmon sport fishery may be developed after the annual PFMC reports, *Review of 2009 Ocean Salmon Fisheries* and *Preseason Report / Stock Abundance Analysis for 2010 Ocean Salmon Fisheries*, are available in late February 2010.

#### Present Regulations

Current regulations have a short salmon fishing season north of Horse Mountain including Humboldt Bay from August 29 through September 7, 2009. All areas south of Horse Mountain were closed in 2009, but include a note that in 2010, the season in these areas will open on April 3.

#### Proposed Regulations

For public notice purposes to facilitate Commission discussion, the Department of Fish and Game (Department) is proposing two regulatory options:

- 1) No fishing in all areas, and
- 2) Limited salmon fishing, if salmon allocations are made available

The proposed changes from current regulations are shown below:

#### Option 1 - No fishing in all areas

The date ranges in the following areas are proposed to encapsulate all possibilities of the Commission final action on the PFMC 2010 recommendations in mid-April. This approach will allow final State ocean salmon regulations to be effective at the same time as salmon regulations in federal ocean waters.

- (1) For the area north of Horse Mountain, the following language is proposed to replace the existing regulations:
  - a. All waters of the ocean north of Horse Mountain and in Humboldt Bay are closed to salmon fishing.

**Because the PFMC adopted a sport fishing season and other modifications to existing recreational salmon fishing regulations at its April 15<sup>th</sup> decision hearing, option 1 is no longer viable and thus, there are no proposed modifications to the noticed regulatory text of option 1.**

#### Option 2 - Limited salmon fishing, if salmon allocations are made available

The date ranges in the following areas are proposed to encapsulate all possibilities of the Commission final action on the PFMC 2010 recommendations in mid-April. This approach will allow final State ocean salmon regulations to be effective at the same time as salmon regulations in federal ocean waters.

- (1) For all waters of the ocean north of Horse Mountain and in Humboldt Bay: The season, if any, may occur within the range of May 15 - September 30. The exact opening and closing dates, and the length of the season will be determined in April by the PFMC. In 2011, the season will open on a date within the range of May 21 - September 30.
- (2) For the area between Horse Mountain and Point Arena: The season, if any, may occur within the range of April 3 - November 14. The exact opening and closing dates, and the length of the season will be determined in April by the PFMC. In 2011, the season will open on a date within the range of February 12 - April 30.
- (3) For the area between Point Arena and Pigeon Point: The season, if any, may occur within the range of April 3 - November 14. The exact opening and closing dates, and the length of the season will be determined in April by the PFMC. In 2011, the season will open on a date within the range of April 2 - April 30.
- (4) For the areas between Pigeon Point and Point Sur: The season, if any, may occur within the range of April 3 - October 3. The exact opening and closing dates, and the length of the season will be determined in April by the PFMC. In 2011, the season will open on a date within the range of April 2 - April 30.
- (5) For the areas south of Point Sur: The season, if any, may occur within the range of April 3 - October 3. The exact opening and closing dates, and the length of the season will be determined in April by the PFMC. In 2011, the season will open on a date within the range of April 2 - April 30.

#### **Modified Option 2**

**The Amended Informative Digest and updates to the proposed regulatory text reflect amendments needed to allow state salmon fishing regulations to explicitly conform to the new regulations adopted for federal waters 3-200 miles from shore. The PFMC adopted these new regulations at its meeting April 15, 2010.**

**In March 2010, NMFS issued guidance to the PFMC regarding new constraints that will be needed for 2010 ocean salmon fisheries to increase protection for endangered winter-run Chinook. The guidance requires either a reduction in the length of the fishing season for two consecutive months or an increase in the minimum size limit from 20 inches to 24 inches.**

**On April 15, the PFMC adopted their final recommendation for the 2010 federal regulations, which incorporated the NMFS guidance provided in March.**

**The proposed changes from the original notice, and the final actions taken by the PFMF and now under consideration by the Fish and Game Commission in this amended notice are detailed below:**

**The proposed inclusion of a 2011 season opening date provided in the original notice has been removed. Regulations specifying the 2011 season date will be established in a subsequent regulatory action when more information on 2011 fishing opportunities becomes available.**

- (1) For all waters of the ocean north of Horse Mountain and in Humboldt Bay: The season will run May 29, 2010 through September 6, 2010.**
- (2) For the area between Horse Mountain and Point Arena: The season will run April 3, 2010 through September 6, 2010.**
- (3) For the area between Point Arena and Pigeon Point: The season will run April 3, 2010 to April 30, 2010 seven days per week. Beginning May 1, 2010, fishing will be allowed on Thursday through Monday only, through September 6, 2010. The minimum size will be twenty inches total length through April 30, 2010 and increase to twenty-four inches total length thereafter.**
- (4) For the areas between Pigeon Point and Point Sur: The season will run April 3, 2010 to April 30, 2010 seven days per week. Beginning May 1, 2010, fishing will be allowed on Thursday through Monday only, through September 6, 2010. The minimum size will be twenty inches total length through April 30, 2010 and increase to twenty-four inches total length thereafter.**
- (5) For the areas south of Point Sur: The season will run April 3, 2010 to April 30, 2010 seven days per week. Beginning May 1, 2010, fishing will be allowed on Thursday through Monday only, through September 6, 2010. The minimum size will be twenty inches total length through April 30, 2010 and increase to twenty-four inches total length thereafter.**

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Fish and Game Commission Conference Room, State of California Resources Building, 1416 Ninth Street, Room 1320, Sacramento, California, on Wednesday, April 21, 2010, at **9:30 a.m.**, or as soon thereafter as the matter may be heard. Written comments may be submitted at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). All comments must be received no later than April 21, 2010 at the hearing in Sacramento, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct

requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Fonbuena at the preceding address or phone number.

Ms. Marija Vojkovich, Regional Manager, Marine Region, Department of Fish and Game, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

### **Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

### **Impact of Regulatory Action**

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

#### Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

#### Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: April 20, 2010

John Carlson, Jr.  
Executive Director